

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0190

HOUSE BILL NO. 1060

Introduced by: The Committee on Judiciary at the request of the Department of Game,
Fish and Parks

1 FOR AN ACT ENTITLED, An Act to revise the method for and the limitations on imposition
2 of various civil damages for unlawfully taking wild animals.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 41-1-5.1 be amended to read as follows:

5 41-1-5.1. Any person other than a minor under the age of sixteen years who willfully and
6 unlawfully kills, destroys, takes, or possesses in this state any wild animal designated by this
7 section without an applicable and valid big game or small game license; at a time or place when
8 and where taking or possession of such regulated wild animal is prohibited; in excess of the legal
9 limit of big game if exceeded by one or more; or in excess of the legal daily or possession limit
10 of small game or fish if exceeded by two or more; is liable to the state for damages, which are:

11 (1) ~~five~~ Five thousand dollars for each elk, mountain lion, or buffalo;

12 (2) ~~ten~~ Ten thousand dollars for each mountain goat or mountain sheep;

13 (3) ~~one~~ One thousand dollars for each deer, antelope, or bobcat;

14 (4) Two hundred dollars for each turkey;

15 (5) Two hundred dollars for each paddlefish;

(6) One hundred dollars for each species of small game;

(7) Fifty dollars for each fish for any species, other than paddlefish, with an established daily limit of less than twenty-five.

If a person has taken or is in possession of more than two times the lawful daily possession limit of a regulated wild animal, such person is liable for twice the damages provided in this section.

However, the return uninjured of the ~~big game~~ wild animal to the place where captured, or to such other place as the Department of Game, Fish and Parks may direct, constitutes a discharge of such damages. ~~However~~ Moreover, the provisions of this section do not apply to any person, who, after providing written notice received by the Department of Game, Fish and Parks, forty-eight hours in advance, takes reasonable actions to protect the person's land, livestock, or crops from serious and extraordinary damages caused by elk, deer, antelope, wild turkey, or mountain lion. Nothing in this section or any other provision of law prevents any person from taking any action necessary to protect the personal safety of that person or any other person who is in immediate danger of harm from a mountain lion or other animal specified in this section.

Section 2. That § 41-1-5.2 be amended to read as follows:

41-1-5.2. The liquidated damages provided for in this chapter and taxable costs may be collected by the Department of Game, Fish and Parks in a civil suit brought by it, in the name of the State of South Dakota, against the person claimed to be liable therefor. Conviction of a criminal offense for the same incident leading to the charges specified in §§ 41-1-5.1 ~~and 41-1-5.3 to 41-1-5.5, inclusive~~, is prima facie evidence of the defendant's civil liability. Failure to obtain conviction on a criminal charge is not a bar to a separate civil action for such liquidated damages.

1 The department, collecting such liquidated damages and taxable costs, shall deposit them in
2 the Department of Game, Fish and Parks fund. Any other public agency or department of the
3 state, collecting liquidated damages and taxable costs, shall remit the moneys collected, less the
4 agreed collection fee, to the state treasurer who shall deposit them in the Department of Game,
5 Fish, and Parks fund.

6 The judgment and liquidated damages may be collected by an agent. Fees to agents
7 authorized to collect on a judgment under this section may not exceed fifty percent of the total
8 amount collected. With approval of the department, agreed collection fees may be deducted from
9 the moneys collected when remitted or may be paid on warrants drawn by the state auditor on
10 itemized vouchers approved by the secretary of game, fish and parks and submitted
11 simultaneously with the moneys collected.

12 Section 3. That § 41-1-5.3 be repealed.

13 ~~41-1-5.3. Any person, other than a minor under the age of sixteen years, who willfully and~~
14 ~~unlawfully kills, destroys, takes, or possesses any small game bird or wild turkey during a closed~~
15 ~~season or without a license is liable to the state for civil damages of one hundred dollars for each~~
16 ~~small game bird and two hundred dollars for each turkey. However, the provisions of this section~~
17 ~~do not apply to any person, who, after providing written notice received by the Department of~~
18 ~~Game, Fish and Parks, forty-eight hours in advance, takes reasonable actions to protect the~~
19 ~~person's land or crops from serious and extraordinary damages caused by wild turkeys.~~

20 Section 4. That § 41-1-5.4 be repealed.

21 ~~41-1-5.4. Any person, other than a minor under the age of sixteen years, who willfully and~~
22 ~~unlawfully kills, destroys, takes, or possesses five or more small game birds or two or more wild~~
23 ~~turkeys in excess of the legal limit during an open season is liable to the state for civil damages~~
24 ~~of one hundred dollars per each small game bird and two hundred dollars for each turkey in~~

1 ~~excess of the legal limit. However, the provisions of this section do not apply to any person,~~
2 ~~who, after providing written notice received by the Department of Game, Fish and Parks, forty-~~
3 ~~eight hours in advance, takes reasonable actions to protect the person's land or crops from~~
4 ~~serious and extraordinary damages caused by wild turkeys.~~

5 Section 5. That § 41-1-5.5 be repealed.

6 ~~—41-1-5.5. Any person, other than a minor under the age of sixteen years, who willfully and~~
7 ~~unlawfully kills, destroys, takes or possesses five or more fish in excess of the daily or possession~~
8 ~~limit for any species with a daily limit less than ten is liable to the state for civil damages of fifty~~
9 ~~dollars per each fish in excess of the legal limit.~~

10 Section 6. That § 41-1-5.6 be amended to read as follows:

11 41-1-5.6. A statement generally outlining the civil liability provisions of §§ 41-1-5.1 to
12 ~~41-1-5.5, inclusive,~~ shall be printed on the reverse of the citation given by an arresting officer at
13 the time of the arrest to the person violating game and fish statutes. Acknowledgment of receipt
14 of the information concerning civil liability by the defendant is to be noted specifically through
15 a specific receipt form to draw attention to civil penalties.

16 No person who has been prosecuted for a criminal offense may be held liable for civil
17 damages pursuant to §§ 41-1-5.1 to ~~41-1-5.5, inclusive,~~ and 41-1-5.2 arising from the same
18 offense or incident if ~~he~~ the person has not received the warnings required in this section.

19 Section 7. That § 41-1-5.8 be repealed.

20 ~~—41-1-5.8. If a person has taken or is in possession of more than two times the lawful daily~~
21 ~~or possession limit of a regulated wild animal, the liquidated damages as determined and~~
22 ~~provided for in §§ 41-1-5.1 and 41-1-5.3 to 41-1-5.5, inclusive, shall be doubled.~~